

REMARKS

As noted previously, Applicant appreciates the Examiner's thorough examination of the subject application.

Claims 7-9 and 49-120 remain in the subject application. Claims 1-6 and 10-48 have been previously cancelled. Claims 7-9, 49-59 and 94-103 are withdrawn from consideration as being directed to non-elected inventions. In the non-final Office Action mailed 24 July 2009, claims 60-93 and 104-120 were rejected on various grounds, as described in further detail below.

Independent claims 60, 63, 67, 69, 72, 76, 78, 80, 82, 86, 87, 88, 89, 92, 104, 106, 109, 110, 112, 113, and 114 are amended herein to recite use of first and second up-samplers for inserting additional samples into the sum (or, summation) and difference signals. The amendments are supported by the original disclosure, e.g., at least by FIGS. 8D and 9 as well as paragraphs [0099] and [0103]. Claims 107-108, 111, and 120 are canceled without prejudice. No new matter has been added.

Based on the foregoing amendments and the following remarks, reconsideration and further examination are respectfully requested for the subject application.

Claim Rejections - Double Patenting

Concerning items 3-14, and 16-18 of the Office Action, claims 60-82, 86-93, and 104-120 were rejected over various claims of Applicant's co-owned U.S. Patent No. 5,796,842 in view of the prior art as illustrated in Fig. 1 of the specification. Concerning item 15 of the Office Action, claims 111 and 120 were rejected over claim 1 of Applicant's co-owned U.S. Patent No. 6,118,879 in view of the prior art as illustrated in Fig. 1 of the specification.

Without addressing or conceding the merits of the above-listed provisional double-patenting rejections, for expediency of prosecution, Applicant submits herewith an executed terminal disclaimer referencing Applicant's co-owned U.S. Patent 5,796,842. Applicant further notes that claims 111 and 120 have been canceled without prejudice by the present amendment.

In view of the filing of the terminal disclaimer and cancellation of claims 111 and 120, as described above, reconsideration and withdrawal of the double patenting rejections of claims 60-82, 86-93, and 104-120 are respectfully requested.

Response to Amendment

Concerning items 19-20, the Office Action stated that the previously filed declaration under 37 CFR 1.132 of Dr. John Strawn (filed 14 April 2009) and the previously filed declaration under 37 CFR 1.132 of Mr. Tyler (filed 22 May 2009) were insufficient to overcome the previous rejection under 35 U.S.C. § 103(a) of claims 60-77, 83, 84, 86-89, 91, 110, 112-115, and 119 based on Applicant's admitted prior art as illustrated in Fig. 1 of the specification in view of U.S. Patent No. 4803,727 to Holt et al. ("Holt") and the rejection under 35 U.S.C. § 103(a) of claims 78-81, 104-108, 111, 116-118, and 120 over Holt and U.S. Patent No. 4,809,274 to Walker et al. ("Walker"). In response, the Applicant is preparing one or more supplemental declarations to address the issues noted in items 19-20.

Claim Rejections – 35 U.S.C. § 103

Concerning items 21-22 of the Office Action, claims 60-77, 83-84, 86-89, 91, 109, 110, 112-115, and 119 were rejected under 35 U.S.C. § 103(a) as being unpatentable over applicant admitted prior art as illustrated in FIG. 1 ("APA") in view of U.S. Patent No. 4,803,727 to Holt et al. ("Holt").

Concerning item 23 of the Office Action, claims 78-81, 85, 104, 105-108, 111, 116-118, and 120 were rejected under 35 U.S.C. § 103(a) as being unpatentable over APA in view of Holt, cited previously, and in further view of U.S. Patent No. 4,809,274 to Walker et al. ("Walker").

As noted previously, independent claims 60, 63, 67, 69, 72, 76, 78, 80, 82, 86, 87, 88, 89, 92, 104, 106, 109, 110, 112, 113, and 114 are amended herein to recite use of first and second up-samplers used for inserting additional samples into the sum (or, "summation") and difference signals. Additionally, claims 107-108, 111, and 120 are canceled herein without prejudice. The

amendments are supported by the original disclosure, e.g., at least by FIGS. 8D and 9 as well as paragraphs [0099] and [0103]. No new matter has been added.

Without acceding to the statements alleged in the Office Action for the rejections, the present amendments to the claims are believed to render the rejections as moot as none of the applied prior art is believed to teach or suggest use of first and second up-samplers as recited in independent claims 60, 63, 67, 69, 72, 76, 78, 80, 82, 86, 87, 88, 89, 92, 104, 106, 109, 110, 112, 113, and 114. The other claims currently under consideration in the application are dependent from their respective independent claims discussed above and therefore are believed to be allowable over the applied references for at least similar reasons. Because each dependent claim is deemed to define an additional aspect of the invention, the individual consideration of each on its own merits is respectfully requested.

Applicant, therefore, respectfully requests withdrawal of the noted rejections under 35 U.S.C. § 103(a).

Summary

In view of the foregoing, the Applicant submits that the claims are now in condition for allowance and respectfully requests a notice to this effect. Should the Examiner have any questions, please call the undersigned at the phone number listed below.

The absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be other reasons for patentability of any or all claims that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede, or an actual concession of, any issue with regard to any claim or any cited art, except as specifically stated in this paper, and the amendment or cancellation of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment or cancellation.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 501133 and please credit any excess fees to such deposit account.

Respectfully submitted,

Date: 25 January 2010

/G. Matthew McCloskey/
G. Matthew McCloskey
Reg. No.47,025
McDERMOTT WILL & EMERY LLP
28 State Street
Boston, Massachusetts 02109
Telephone: (617) 535-4082
Facsimile: (617) 535-3800